

January 29, 2004

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Appeal*

Name of Petitioner: Jeanna L. Gann

Date of Filing: December 29, 2003

Case Number: TFA-0052

On December 29, 2003, Jeanna L. Gann filed an Appeal from a determination the DOE's Oak Ridge Operations Office (DOE/OR) issued on November 24, 2003. The determination responded to a request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004.

*I. Background*

Ms. Gann requested from DOE/OR records pertaining to her deceased father, Herschel Leo Lovvorn, who worked for the Atomic Energy Commission (AEC), a predecessor agency to the DOE, at Oak Ridge, Tennessee. In its response, DOE/OR informed Ms. Gann that "a search of [DOE/OR] was conducted. However, the only information that could be located is Mr. Lovvorn's employment card. A copy of this file is enclosed." Letter from Amy L. Rothrock, DOE/OR, to Jeanna L. Gann (November 24, 2003). In the present appeal, Ms. Gann challenges "the adequacy of the search for my father's employment records." Appeal at 1.

II. Analysis

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. See, e.g., Butler, Vines and Babb, P.L.L.C., 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." Miller v. Department of State, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord Weisberg v. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984). In cases such as these, "[t]he issue is not whether any further documents might

conceivably exist but rather whether the government's search for responsive documents was adequate." Perry v. Block, 684 F.2d 121, 128 (D.C. Cir. 1982) (emphasis in original).

Thus, upon receiving the present Appeal, we contacted DOE/OR to inquire as to the search i conducted in response to Ms. Gann's request. DOE/OR provided the following description of its search:

For FOIA Request 02-082, Herschel L. Lovvorn, we sent a request for records to the East Tennessee Technology Park (formerly the Oak Ridge K-25 Plant), the Oak Ridge Y-12 Plant, the Oak Ridge National Laboratory, our DOE Office of Safeguards and Security and our Records Holding area where the archived records are kept. As a result of this search, an employment card was located, and some additional information was provided to us from our DOE Worker's Advocacy Office.

For each office that we send a request to, we ask that they respond with a "no records" response if no information is found, which we keep as a record for our files. The searches are generally done on computer data bases and some manual searches are done as well. The information the requestor provides on the Freedom of Information Act request forms, the name, social security number, dates of employment, etc., is used to conduct the searches.

Electronic mail from Leah Ann Schmidlin, DOE/OR, to Steven Goering, OHA (January 7, 2004).<sup>\*</sup> DOE/OR has confirmed that those search procedures were followed in the present case. Electronic mail from Leah Ann Schmidlin, DOE/OR, to Steven Goering, OHA (January 22, 2004).

Based on the above descriptions, it appears clear to us that DOE/OR performed a diligent search of locations under its jurisdiction where responsive documents were most likely to exist. Thus, we conclude that the search was reasonably calculated to uncover the records Ms. Moore sought.

However, in her appeal, Ms. Gann indicated that her father also worked for the AEC at Fernald (Ohio), Los Alamos (New Mexico), and Germantown (Maryland) during his tenure with the AEC. DOE/OR has therefore forwarded Ms. Gann's request to the DOE offices (Fernald, Albuquerque, and DOE Headquarters, respectively) that would have responsibility for any other records within the DOE complex that pertain to Mr. Lovvorn. Those offices will provide separate responses to Ms. Gann upon completion of their searches. Ms. Gann will have the opportunity to file an appeal to this office from each of those responses.

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<sup>\*</sup> The "additional information" from the worker advocacy office to which this email refers are claim records compiled for the Energy Employees Occupational Illness Compensation Program. Electronic mail from Amy Rothrock, DOE/OR, to Steven Goering, OHA (December 31, 2003). These records were not provided to Ms. Gann in DOE/OR November 24, 2003 response, but have since been provided in a supplemental response from DOE/OR.

Accordingly, the present Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by Jeanna L. Gann, Case Number TFA-0052, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: January 29, 2004